

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LAKITA CARR, *Individually, et al.*

Plaintiffs,

vs.

**THE CITY OF SPRING VILLAGE, *et*
*al. Defendants.***

§

§

§

§

§

§

§

**Civil Action No.:4:18-cv-02585
JURY DEMANDED**

**PLAINTIFF'S MOTION FOR NEW TRIAL, TO REINSTATE AND REOPEN
CASE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, Laktia Carr, individually and on behalf of the Estate of Darrall Thomas, and Angela Leffyear as next friend for minor D.T. file this their Motion for New Trial and request the court reinstate and reopen the case that was dismissed based on lack of service, and would show the court the following:

BACKGROUND

This case was filed in Harris County State Court on May 31, 2018. This case was dismissed with prejudice as to Defendants, Carlos Pineda, Stephen Sanford, Eric Silliman, Donald Nowlin, City of Hedwig Village, City of Spring Valley Village, Spring Branch Independent School District, Scott Williams, and Jerry Hanson; and, without prejudice as to defendants City of Memorial Village, Axon,

CSVV Officers Joseph Darrehshoori and Trent B. Wood, and Nathan Frazier on March 20, 2019. Plaintiff requested and each defendant have been served with process, except defendants, Axon, Mark Stokes, Trent Wood, Nathan Frazier, Jerry Hanson. Spring Branch, Williams, and Hanson voluntarily appeared and availed themselves to the personal jurisdiction of the court. The case was subsequently removed to federal court based on Federal question jurisdiction.

The following Defendants in this case were served with process with the state court petition and citation¹:

Service of process was effectuated on Donald Nowlin on 8/6/2018

Service of process was effectuated on Darrehshoori on 8/23/2018

Service of process was effectuated on Trent Wood on 9/12/2018

Service of process was effectuated on City of Spring Valley Village on 7/10/2018

Service of process was effectuated on City of Hedwig Village on 7/10/2018

Service of process was effectuated on Stephen Sanford on 7/10/2018

Service of process was effectuated on Carlos Pineda on 7/13/2018

Service of process was effectuated on Reginald Hernandez on 7/19/2018 (See Exhibit #1),

However, after numerous and continuance attempts from 6/1/2018 to present,

¹ See Dkt. 1, 17

Plaintiffs have been unable to serve the following Defendants:

Axon

Mark Stokes

Nathan Frazier,

Spring Branch School District,

Scott Williams, and

Jerry Hanson. Although Spring Branch, Williams, and Hanson voluntarily appeared and availed themselves to the personal jurisdiction of the court².

As the court is well aware, the summons and complaint must be served within 120 days or the case is subject to dismissal; provided that ***if the plaintiff shows good cause for failing to serve process, the court shall extend the time for service.***

See, *Traina v. United States*, 911 F.2d 1155, 1157 (5th Cir. 1990). The core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections. *Henderson v. U.S.* 517 U.S. 972 (1996) .

Here, good cause exists for the inability to serve Axon³, Mark Stokes, Trent

² See Dkt 7

³ Axon's counsel, Amy L. Nguyen, has been in communication with Plaintiff's counsel but has not accepted service on its behalf.

Wood, Nathan Frazier, Spring Branch School District, Scott Williams, and Jerry Hanson in that efforts to serve each defendant was diligently made by the Plaintiffs at the same time efforts to serve the defendants who were successfully served. As such, Plaintiff respectfully request an extension of time to serve these remaining defendants and reinstate the case as to the served defendants.

PRAYER

Plaintiffs, therefore, respectfully request the court grant the Motion for New Trial, as to Defendants dismissed for want of prosecution, and City of Spring Valley Village to allow facts to come to light after Darrehshoori appears and answers, and reinstate the case on the court's docket with the defendants who have been served, but have failed to appear and answer the suit. Plaintiff further prays the court allow Plaintiffs an extension in time to continue to effectuate service on the remaining Defendants Axon, Mark Stokes, Trent Wood, Nathan Frazier, under FRCP Rule 4(m).

Respectfully Submitted,
U. A. Lewis
/s/U. A. Lewis
The Lewis Law Group
State Bar No. 24076511
Federal ID: 1645666
PO Box 27353
Houston, Texas 77227

Counsel for Plaintiff
Myattorneyatlaw@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to all the following counsel of record in accordance with the District's ECF service rules on this 17th day of April 2019.

U.A. Lewis/s/

U. A. Lewis